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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/073,473	02/11/2002	Paul C. Brown	27242.5	4365

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EXAMINER	
TAYLOR, BARRY W	

ART UNIT	PAPER NUMBER
2643	

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/073,473	BROWN, PAUL C.	
	Examiner	Art Unit	
	Barry W Taylor	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 August 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *11 February 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingalsbe et al (6,556,661 hereinafter Ingalsbe) in view of Bauer et al (Pub. No.: 2004/0028189 hereinafter Bauer).

Regarding claim 1. Ingalsbe teaches a telecom test device (see figure 1) for connecting to a telephone line carrying an information stream (col. 1 line 43), the device comprising:

a measurement system connected to device (see 10 figures 1 and 2), wherein the measurement system can make a determination (col. 2 line 17 – col. 3 line 45, col. 4 lines 25-67);

a first circuit (see microcontroller 14 figure 2) for determining a transmission technology from the determination (col. 3 lines 28-30, col. 5 lines 22-29, col. 6 lines 32-52, col. 7 lines 10-14, col. 8 line 65 – col. 12, col. 10 lines 15-22); and

a second circuit for selectively connecting the device to the telephone line in response to the determination of the transmission of the transmission technology (col. 3 lines 28-30, col. 5 lines 22-29, col. 6 lines 32-52, col. 7 lines 10-14, col. 8 line 65 – col. 12, col. 10 lines 15-22).

Ingalsbe does not teach determining a transmission technology (see Applicant's newly added claim language and arguments on page 7, lines 9-18 of paper dated 8/30/2004).

Bauer teaches a method and apparatus for qualifying telephone lines for high speed data services (abstract) enabling service providers the ability to determine why particular lines are unable to support data transmissions and where faults occur (paragraphs 0003-0005), as well as, allowing service providers the ability to charge different rates based on what rate the lines will support (paragraph 0065). Bauer also uses a single-ended tester (2 figure 1, paragraphs 0018-0021, 0070-0088) for performing line qualification tests, and categorizing the results of such testing. Bauer discloses the single-ended tester contains models (figure 4) used to classify data rates that line can support (paragraphs 0060-0069). Bauer discloses the single-ended tester also uses color-code to make classification easier (paragraphs 0063-0067, figures 2-5).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the device as taught by Ingalsbe to incorporate the table as taught by Bauer (figure 4) providing for user friendly tester that not only assigns speeds that telephone line can support but allows service providers the ability to charge different rates for different speeds.

Regarding claim 2. Ingalsbe teaches microcontroller (see 14 figure 2).

Regarding claim 3. Ingalsbe teaches external indicator (col. 1 lines 53-60, col. 2 line 33). Bauer also uses external indication (see color-coded paragraphs 0063-0069, figures 2-3, paragraphs 0075 – 0095).

Regarding claim 4. Ingalsbe does not explicitly show using register for taking digital snap shot.

Bauer teaches a method and apparatus for qualifying telephone lines for high speed data services (abstract) enabling service providers the ability to determine why particular lines are unable to support data transmissions and where faults occur (paragraphs 0003-0005), as well as, allowing service providers the ability to charge different rates based on what rate the lines will support (paragraph 0065). Bauer also uses a single-ended tester (2 figure 1, paragraphs 0018-0021, 0070-0088) for performing line qualification tests, and categorizing the results of such testing. Bauer discloses the single-ended tester contains models (figure 4) used to classify data rates that line can support (paragraphs 0060-0069). Bauer discloses the single-ended tester also uses color-code to make classification easier (paragraphs 0063-0067, figures 2-5).

It would have been obvious for any one of ordinary skill in the art at the time of invention to modify the device as taught by Ingalsbe to incorporate the table as taught by Bauer (figure 4) providing for user friendly tester that not only assigns speeds that telephone line can support but allows service providers the ability to charge different rates for different speeds.

Regarding claim 5. Ingalsbe teaches selectively prevents data (col. 2 lines 17-20).

Regarding claims 6-8. Ingalsbe teaches external indicator (col. 1 lines 53-60, col. 2 line 33). Bauer also uses external indication (see color-coded paragraphs 0063-0069, figures 2-3, paragraphs 0075 – 0095).

Regarding claim 9. Ingalsbe teaches manual override (col. 6 lines 50-53).

Software claims 10-11 are rejected for the same reasons as apparatus claims 1-9 and method claims 12-19 since the recited method and apparatus would perform the claimed software routine.

Method claims 12-19 are rejected for the same reasons as apparatus claims 1-9 since the recited apparatus would perform the claimed method steps.

Regarding claims 20-22. Bauer teaches assigning different data speeds that line can support (see ISDN or ADSL paragraph 0005, see ISDN or xDSL paragraph 0028, see ADSL or T1 paragraphs 0045-0046, see ISDN, ADSL and so on paragraphs 0049, 0057, 0065-0066, 0088 and figure 4).

Response to Arguments

2. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

3. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231
or faxed to:
(703) 872 9314,
(for informal or draft communications, please label "PROPOSED" or "DRAFT")
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry W. Taylor, telephone number (703) 305-4811, who is available Monday-Friday, 6:30am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz, can be reached at (703) 305-4708. The facsimile phone number for this group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (703) 305-4750, the 2600 Customer Service telephone number is (703) 306-0377.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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